



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2016-0007]**

**Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 11 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2016-0007 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov> as described in the system records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224,

Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a two-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the two-year period.

The 11 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria<sup>1</sup> to assist Medical Examiners in determining whether drivers with certain medical conditions are

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<sup>1</sup> See [http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391\\_171](http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171). a and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The advisory criteria state the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Prior to considering certification, it is suggested there be a six-month waiting period from the time of the episode. Following the waiting period, it is suggested that the individual undergo a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers who have had a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for five years or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, in a Notice of Final Disposition entitled, “Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,” (78 FR 3069), FMCSA announced its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency’s Medical Expert Panel (MEP) (78 FR 3069).

## **II. Qualifications of Applicants**

### **Kevin Beamon**

Mr. Beamon is a 56 year-old class A CDL holder in New York. He has a history of a seizure in 2007. He takes anti-seizure medication with the dosage and frequency

remaining the same since 2011. His physician states that he is supportive of Mr. Beamon receiving an exemption.

Marvin Lavern Fender

Mr. Fender is a 63 year-old class A CDL holder in Colorado. He has a history of a seizure disorder and his last seizure was in 1996. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Fender receiving an exemption.

Michael Charles Grant

Mr. Grant is a 54 year-old driver in South Carolina. He has a history of a seizure disorder and his last seizure was in 1995. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Grant receiving an exemption.

Todd W. Hines

Mr. Hines is a 46 year-old class B CDL holder in Ohio. He has a history of a brain tumor removal and a single seizure in 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. His physician states that he is supportive of Mr. Hines receiving an exemption.

John A. Kangas

Mr. Kangas is a 44 year-old class A CDL holder in Michigan. He has a history of epilepsy and his last seizure was in 2001. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Kangas receiving an exemption.

Chad Thomas Knott

Mr. Knott is a 24 year-old driver in Maryland. He has a history of juvenile epilepsy and his last seizure was in 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Knott receiving an exemption.

Duane Scott Mahin

Mr. Mahin is a 56 year-old driver in Kansas. He has a history of juvenile epilepsy and his last seizure was in 1977. He has not taken anti-seizure medication since 1982. His physician states that he is supportive of Mr. Mahin receiving an exemption.

Cornelius L. Page

Mr. Page is a 55 year-old driver in Maryland. He has a history of a seizure disorder and his last seizure was in 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Page receiving an exemption.

Curtis Joseph Palubicki

Mr. Palubicki is a 30 year-old driver in Minnesota. He has a history of epilepsy and his last seizure was in September 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Palubicki receiving an exemption.

Daniel A. Pierstorff

Mr. Pierstorff is a 48 year-old class A CDL holder in Wisconsin. He has a history of epilepsy and his last seizure was in 1982. He takes anti-seizure medication with the

dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Pierstorff receiving an exemption.

William M. Powderly

Mr. Powderly is a 33 year-old driver in California. He has a history of a seizure disorder and his last seizure was in 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Powderly receiving an exemption.

**III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

**IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2016-0007” and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each



suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

#### **V. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2016-0007 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

**Issued on:** October 7, 2016

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Larry W. Minor  
Associate Administrator for Policy

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